

**ARIZONA DEPARTMENT OF HEALTH SERVICES
DIVISION OF PUBLIC HEALTH SERVICES
SMOKE-FREE ARIZONA PROGRAM**

**SUBSTANTIVE POLICY STATEMENT
#SP-086-PHS-EDC**

Bars and Restaurants Are Not Retail Tobacco Stores Under Smoke-Free Arizona

This substantive policy is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedures Act. If you believe that this substantive policy does impose additional requirements or penalties on regulated parties, you may petition the agency under the Arizona Revised Statutes Section 41-1033 for a review of the statement.

The purpose of this substantive policy statement is to notify the public of: the Department's interpretation of the term "retail store" used in A.R.S. § 36-601.01(9), the Department's interpretation of the term "retail tobacco store" defined in A.R.S. § 36-601.01(10), and the Department's determination that a bar or a restaurant cannot be either a retail store or a retail tobacco store.

Under the Smoke-Free Arizona Act ("the Act"), smoking is prohibited in public places, such as: airports, banks, bars, common areas of apartment buildings, condominiums or other multifamily housing facilities, . . . , restaurants, retail stores, shopping malls, sports facilities, theaters, and waiting rooms. *See generally* A.R.S. § 36-601.01(A)(9). Under the Act, a "retail tobacco store" is defined as a "retail store that derives the majority of its sales from tobacco products and accessories." A.R.S. § 36-601.01(A)(10). Although the Department interprets a retail tobacco store to be a subset of a retail store, under the Act, a retail tobacco store is exempt from the smoking prohibition. A.R.S. § 36-601.01(B).

Only a retail store that derives the majority of its sales from tobacco products and accessories is exempt from the Act's smoking prohibition. A.R.S. § 36-601.01(A)(10). The Department interprets a "retail store" to be a facility established with the appropriate permits and licenses from the appropriate jurisdictions to do business selling products and merchandise to the public. A facility with a liquor license that allows alcoholic beverages to be served for consumption on site is a bar. A facility with a food establishment license that allows food to be served for consumption on site is a restaurant. Neither a bar nor a restaurant is a "retail store." Accordingly, neither a bar nor a restaurant is a "retail tobacco store" under the Act. This holds true, regardless of whether the bar or restaurant alters its operations to include retail sales of tobacco products and accessories or allows smoking during hours in which alcohol or food is not served. Since a bar or restaurant is neither a "retail tobacco store" nor capable of transforming itself into "retail tobacco store," a bar or a restaurant cannot fall under the smoking exception provided to a "retail tobacco store" under the Act.

Bars and restaurants that wish to permit patrons to smoke may utilize the outdoor patio exception found in A.R.S. § 36-601.01(B)(6).

Similarly, an establishment that uses the retail tobacco store exception of the Act to permit indoor smoking cannot also be a bar or a restaurant. For example, a retail tobacco store that permitted indoor smoking and that served food or alcohol before the effective date of the Act will no longer be permitted to serve food or alcohol. Neither may a retail tobacco store that permits indoor smoking add food or alcohol service after the effective date of the Act. However, the Act and this substantive policy statement do not prohibit an establishment that qualifies for the retail tobacco store exception to instead choose to sell tobacco products and accessories as well as food or alcohol in an indoor environment that is kept smoke-free at all times. Such establishments may, like any other bar or restaurant, or other “public-place” subject to the Act, utilize the outdoor patio exception to permit patrons to smoke.

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Arizona Department of Health Services
Division of Public Health Services
Smoke-Free Arizona Program
150 North 18th Avenue
Phoenix, AZ 85007

For questions, please contact:
Brigitte Dufour, R.S.
Program Manager, Smoke-Free Arizona
Arizona Department of Health Services
Office of Environmental Health
150 N. 18th Avenue, Suite 430
Phoenix, AZ 85007
602-364-3130
dufourb@azdhs.gov